In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1623

FERRIS F. BOOTHE, PETITIONER

v.

ROGERS C. B. MORTON,
SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. App. 29-32) is reported at 347 F.Supp. 1273. The opinion of the court of appeals (Pet. App. 17-28) is reported at 473 F. 2d 790.

JURISDICTION

The judgment of the court of appeals was entered on January 3, 1973. A timely petition for rehearing was denied on March 29, 1973. The petition for a writ of certiorari was filed on June 4, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the courts below properly deferred to a long-standing administrative determination of the Secre-

tary of the Interior restricting selections by holders of soldiers' additional rights to lands similar to those subject to entry under the original homestead laws, namely, to agricultural lands.

2. Whether the courts below properly held that the Secretary did not exceed his discretionary power under recent legislation by setting a ceiling on the value of land available for selection.

STATEMENT

Petitioner, as a holder of soldiers' additional homestead rights (issued under the Act of June 1872, 17 Stat. 333, as amended, 43 U.S.C. 274), filed two applications for public lands. The first application, filed on about July 22, 1965,[1] was for 200 acres near Carson City, Nevada. The Bureau of Land Management denied entry on the ground that the lands selected were "not truly agricultural in character" and were "valuable for higher uses than agriculture." Petitioner's second application, made after July 1, 1966, was for 124.70 acres located outside of Las Vegas, Nevada. It was rejected on the ground that the lands sought exceeded in value the maximum established for selection lands by departmental regulation, promulgated under Section 3 of the Act of August 31, 1964, 78 Stat. 751, 43 U.S.C. 274 (note).

Petitioner brought suit to compel the Secretary to convey to him the specific parcels he had selected in satisfaction of his soldiers' additional rights. The district court denied relief and the court of appeals affirmed.[2]

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[1]The dates are significant because, under the 1964 statute cited below, the Secretary's discretion has been held to be greater with respect to applications filed after July 1, 1966, than with respect to those submitted before that date.

[2]The court of appeals reversed the judgment in a companion case, consolidated on appeal, which involved different claimants (Bronken and Hall) who had applied for lands before July 1, 1966. Since the government has not sought review of that ruling, it does not concern us here.

ARGUMENT

The opinion of the court of appeals fully and clearly sets out the history of the land selection system, the various statutes and regulations involved, and the controlling decisions. It would be wasteful to duplicate that effort here and we accordingly rely on the appellate court's excellent opinion. We shall confine ourselves to a very brief statement of the governing considerations which, in our view, compel the result reached below.

1. The issue with respect to the Carson City lands is simply whether the Secretary of the Interior reasonably restricted holders of "soldiers' additional rights" to selecting agricultural lands, like other homesteaders. The answer seems to us very plain, in light of the policy and language of the statute (43 U.S.C. 274), which merely allowed Civil War veterans who selected a homestead of less than 160 acres to enter additional acreage to make up that maximum. Since the original homestead selection has long been limited to agricultural lands, it is natural to read the same limitation as impliedly imposed on the additional selection. At the very least, that construction is not so clearly erroneous as to warrant overturning the Secretary's long-standing rule.

2. The application for public land near Las Vegas presents a different question because it was filed after a new statutory scheme had become effective. With respect to such applications (submitted after July 1, 1966), Congress expressly authorized the Secretary of the Interior to further restrict the lands which would be subject to entry by outstanding scrip holders, provided only (1) he made enough acreage available to afford each applicant a reasonable choice and (2) such lands were not less valuable than those granted to home-

steaders of the previous decade. See 43 U.S.C. 274 (note). There is no claim that the Secretary violated either mandate; the complaint is simply that his regulation also prevented disposition of abnormally valuable public lands to scrip holders. This imposition of a maximum value ceiling, it seems to us plain, in no way violated the statute. On the contrary, we submit the rule was entirely reasonable, designed as it was to insure fair treatment of all claimants and lessen profiteering.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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